IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 7543 of 2004(S)

OA.491/2002 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
.....

PETITIONER:

P.A.HARIPRASAD, S/O.LATE P.K.ANDAVAN, PUTHENVEETTIL HOUSE, KONTHURUTHY, THEVARA.P.O., ERNAKULAM.

BY ADV. SMT.V.P.SEEMANDINI
SRI.T.R.RAJESH

RESPONDENTS:
----

1. UNION OF INDIA, REP. BY THE SECRETARY TO GOVERNMENT, MINISTRY OF AGRICULTURE, NEW DELHI.

2. M/S.INTEGRATED FISHERIES PROJECT, P.B.NO.1801, KOCHI - 16, REP. BY ITS DIRECTOR.

BY ADV. SRI.K.M.JAMALUDHEEN, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON 11/10/2007 DELIVERED THE FOLLOWING:

WP(C).No. 7543 of 2004(S)

PETITIONER'S EXHIBITS:-

Ext.P1: **Copy of the communication dtd.27.3.2000 issued by the 2nd respondent.**

Ext.P2: **Copy of the order dtd.30.9.2000 issued by the 2nd respondent.**

Ext.P3: **Copy of the communication dated 30.11.2000 issued by the 2nd respondent.**

Ext.P4: **Copy of the letter dtd.4.2.2002 issued by the 2nd respondent.**

Ext.P5: **Copy of the income certificate bearing No.4171/99 dtd.30.10.1999 issued by the Village Officer, Elamkulam.**

Ext.P6: **Copy of the income certificate bearing No.2099/02 dated 13.5.2002 issued by the Village Officer, Elamkulam.**

Ext.P7: **Copy of the judgment dtd.21/1/2003 in OA.No.491/2002 of the CAT, Ernakulam.**

Ext.P8: **Copy of the O.A. filed by the petitioner before Hon'ble CAT, Ernakulam Bench dtd.8/7/2002.**

RESPONDENTS' EXHIBITS:- **Nil.**

(true copy)

P.S. TO JUDGE.

Kvs/-

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

- -

W.P.(C).NO.7543 of 2004-S

- -

Dated this the 11th day of October, 2007

JUDGMENT

Balakrishnan Nair J.

The point that arises for decision in this case is whether the rejection of the claim of the petitioner for appointment under the dying-in-harness scheme under the second respondent is justified or not.

2. The brief facts of the case are the following: The petitioner's father late P.K.Andavan was a Junior Deck Hand, working in the fishing vessels of the second respondent, M/s. Integrated Fisheries Project. His father died in harness on 23.4.1997, leaving behind the widow, four daughters and the petitioner, who was a minor. His father was the only earning member of the family. The eldest daughter's marriage was over before the death of Mr. Andavan. As terminal benefits, the legal heirs were paid a total amount of Rs.1,62,706/- and further, the petitioner's mother was being paid a family pension of Rs.2,550/- per month. The only asset of the petitioner's family was a small house in a plot of land having an extent of about 5.75 cents. The family had no other income to meet the expenses for the education of the children and the marriage of three daughters. The

petitioner's mother submitted an application before the 2nd respondent for employment under the dying-in-harness scheme for the petitioner, on 2.6.1998. The petitioner was called for a personal interview on 4.11.1999. Thereafter, by Ext.P1 communication of the Director of the second respondent dated 27.3.2000 addressed to the petitioner's mother, her application dated 2.6.1998 for appointment of the petitioner under the dying-in-harness scheme, was rejected. The reason for the rejection was that the petitioner was a minor on the date of application. The petitioner's date of birth is 1.6.1981 and he attained the age of 18 years on 1.6.1999. So, at the time of consideration of his application by calling him for an interview on 4.11.1999, the petitioner was a major. When Ext.P1 communication was issued rejecting his claim, undoubtedly he was a major. Aggrieved by Ext.P1 dated 27.3.2000, the petitioner's mother filed a representation on 13.3.2000 seeking employment, pointing out the injustice in denying appointment to her son. The said application was also rejected by Ext.P2 dated 30.9.2000, on the same ground that the petitioner was aged only 17 years on 2.6.1998, when the first application was submitted on his behalf. The petitioner's mother again prayed for reconsideration of the said decision by submitting a representation on 23.10.2000. The said application also met with the very same fate, as evident from Ext.P3 communication of the

second respondent dated 3.11.2000. It stood rejected on the same ground that the petitioner was aged only 17 years on the date of submission of the first application dated 2.6.1998. Thereafter, the petitioner's mother filed a representation before the Minister for Agriculture. Pursuant to that, for the first time, her application was considered on merits and by Ext.P4 communication dated 4.2.2002, she was informed that her annual income is Rs.29,472/-, that she has already received Rs.1,62,706/- towards the terminal benefits due to her late husband and that her son's case is, therefore, not a fit case for granting compassionate appointment.

3. The petitioner challenged the said order by filing O.A. No.491/2002 before the Central Administrative Tribunal, Ernakulam Bench. The Tribunal, by Ext.P7 judgment, dismissed the said O.A. In the said O.A., no counter affidavit was filed. No one appeared and argued for the respondents therein. Still, the application was rejected by the Tribunal on certain new grounds not taken by the respondents in the impugned order. The Tribunal noticed that the claim for the first time made on 2.6.1998, was one year after the death of the employee. There were major unmarried girls. Since they did not apply for appointment, the Tribunal presumed that the family is not in extreme penury. So, the Tribunal held that the view taken by the committee which is reflected in Ext.P4 that the family does not

deserve employment assistance on compassionate ground, cannot be faulted. This writ petition is filed challenging Exts.P1 to P4 and also Ext.P7. The petitioner prays for a mandamus to the second respondent to appoint him on compassionate ground.

4. We heard the learned counsel for the petitioner and the learned counsel for the respondents. We notice that no counter affidavit is part of the records of this case, though the respondents' counsel claimed that the respondents have filed a counter affidavit. The learned counsel for the petitioner submitted that the rejection of the petitioner's application by Exts.P1 to P3, on the ground that he was a minor on the date of the first application made on 2.6.1998, is untenable. When his claim was considered, he was a major. Therefore, the stand of the second respondent is untenable, it is submitted. In support of the said submission, the learned counsel relied on the decision of the Apex Court in **Syed Khadim Hussain v. State of Bihar and others** ((2006) 9 SCC 195). the learned counsel for the petitioner further submitted that the finding that the family has sufficient income and therefore, the petitioner is not entitled to get employment, is also untenable. The total terminal benefits due to the deceased employee will come to only Rs.1,62,706/- and the family pension

is only Rs.2,550/- per month. On the death of the breadwinner, the family had admittedly to feed five mouths and also to meet the educational expenses of the children, apart from the expenses of the marriage of the three daughters. All of them were unemployed also. Therefore, the finding of the second respondent regarding the adequacy of the income of the petitioner's family is unjustified on the facts, it is submitted. The petitioner also pointed out that the decision of the Tribunal which is based on a different ground not taken by the second respondent, is unjustified.

5. The learned counsel for the second respondent supported the order of the Tribunal. Since the first application was submitted after one year of the death of the employee, the same cannot be entertained. Further, the provision for employment under the dying-in-harness scheme is framed to give immediate relief to the family and not to give employment to one of the members of the family after the lapse of several years, it is submitted.

6. We will first deal with the contentions of the learned counsel for the respondents. The rule in force at the relevant time concerning appointment under the dying-in-harness scheme was the O.M. of the Department of Personnel and Training, dated 9.10.1998. In the said O.M., there is no time limit for submitting the application. Paragraph 8 of the said O.M. deals with belated requests for compassionate appointment. The

relevant clause in para 8 reads as follows:

> "**8. Belated requests for Compassionate Appointment**
>
> **(**a) Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned."

A reading of the above clause would show that the delay of about five years or so was treated as objectionable. In this case, the petitioner's mother applied on behalf of him, immediately after the lapse of one year. So, the delay of one year is not a ground which stands in the way of making a valid application. Further, the second respondent does not have any case in Exts.P1 to P4 that the application was belated. So, the said contention raised before us, cannot be accepted. The second ground taken is that the scheme is meant for granting immediate relief to tide over the crisis engendered by the death of the breadwinner and not for providing an employment after the lapse of several years. In this case, the delay was

occasioned except the initial delay of one year, by the irrational stand taken by the respondents. The petitioner's application was rejected thrice for the reason that at the time of making the initial application, he was a minor, though even at the first time of consideration of the application itself, he was major. So, the second respondent cannot take advantage of its own default. If there is delay, the second respondent alone is responsible for the same.

7. Going by the scheme, we notice that even if there is an earning member in the family, still in appropriate cases employment under the dying-in-harness scheme can be given as per paragraph 10 of the aforementioned O.M. The relevant clause in the said paragraph reads as follows:

> "(a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family."

8. Going by the facts of the case, we feel that no man in his senses will say that the terminal benefits amounting to Rs.1,62,706/- and an annual

income of Rs.29,472/- will be sufficient for a large family like that of the petitioner, having regard to its requirements. So, the finding in Ext.P4 that the terminal benefits and the monthly pension received by the petitioner's mother disentitle them to get employment under the dying-in-harness scheme, is plainly perverse and if accepted, will defeat the very purpose of the scheme. Every applicant under the scheme can be denied appointment, if the above stand of the second respondent is upheld. We also notice that the stand of the second respondent that the first application was made when the petitioner was a minor and therefore, the same cannot be considered, does not appeal to common sense. The relevant date is when the candidate is considered for appointment. This view is squarely covered by the decision of the Apex Court in Syed Khadim Hussain, ((2006) 9 SCC 195) relied on by the learned counsel for the petitioner. The relevant portion of the said judgment reads as follows:

> "We are unable to accept the contention of the counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reason the same was rejected. When the appellant submitted the application he was 13 years' old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any

> relaxation of age in case they did not attain majority within the prescribed period for submitting application.
>
> As the widow had submitted the application in time the authorities should have considered her application. As eleven years have passed she would not be in a position to join the government service. In our opinion, this is a fit case where the appellant should have been considered in her place for appointment. Counsel for the State could not point out any other circumstance for which the appellant would be disentitled to be considered for appointment. In the peculiar facts and circumstances of this case, we direct the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months. The appeal is disposed of in the above terms. No costs."

So, the stand taken by the second respondent in Exts.P1 to P3 that the petitioner was a minor when the application was submitted has to be held as untenable, in view of the above pronouncement of the Apex Court.

9. Next point to be considered is the validity of the order of the Tribunal. We are constrained to say that the decision of the Tribunal is manifestly unjust. The Tribunal is supposed to follow the adversary procedure. Wade and Forsyth in their Administrative Law (9th Edition) describe adversary procedure in the following manner:

> "It is fundamental that the procedure before a tribunal, like that in a court of law, should be adversary and not inquisitorial. The tribunal should have both sides of the case presented to it and should judge between them, without itself having to conduct an inquiry of its own motion, enter into the controversy, and call evidence for or against either party. It if allows itself to become involved

> in the investigation and argument, parties will quickly lose confidence in its impartiality, however fair-minded it may be. This principle is observed throughout the tribunal system, even in the adjudging of small claims before social security local tribunals and supplementary benefit appeal tribunals by a departmental officer."

In this case, we notice that the second respondent never had a case that the application was liable to be rejected for the reason of submitting the initial application after a lapse of one year from the date of death of the Government servant. But the Tribunal has taken this as the main ground. It is not a ground taken by the second respondent or urged. So, a new ground is invented and the same was relied on, behind the back of the applicant by the Tribunal, to reject his prayer. The Tribunal also finds fault with the applicant for not approaching it earlier. The Tribunal does not have a case that the application is barred by limitation. Further, we notice that the matter was being pursued promptly and only by Ext.P4, the petitioner's application was considered on merits. Immediately thereafter, the Tribunal was moved within the time limit prescribed by the Statute. So, there is no delay or laches from the part of the applicant. The observations to the contrary made by the Tribunal are also unjust.

In the result, we quash Exts.P1 to P4 and also Ext.P7. Since we have already held that all the grounds taken for denial of employment under the

dying-in-harness scheme by the second respondent are untenable, the petitioner is entitled to be considered for appointment in terms of the O.M. dated 9.10.1998, which was governing the field at the relevant time. Accordingly, the second respondent is directed to reconsider the claim of the petitioner for employment on compassionate grounds, in accordance with law in the light of the observations made herein above and pass appropriate orders, within two months from the date of production of a copy of this judgment.

The writ petition is disposed of as above.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/